

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Guenther H. Ruhe Attorney Docket No.: 473-1
Application No.: 10/807,465 Group Art Unit: 2192
Filed: March 24, 2004 Examiner: Ben C. Wang
Title: RELEASE PLANNING

DECLARATION OF GUENTHER H. RUHE UNDER 37 C.F.R. 1.132

TO THE COMMISSIONER FOR PATENTS:

I, Guenther H. Ruhe, hereby declare and state as follows:

1. I am the sole applicant and inventor of the subject matter described and claimed in U.S. Patent Application No. 10/807,465 (hereinafter "the present application"), which was filed on March 24, 2004. I am also a named co-author of the article "Quantitative Studies in Software Release Planning under Risk Resource Constraints", *IEEE*, Sep. 2003, p. 1 – 10 (hereinafter "the IEEE article"), of the text Software Release Planning: an Evolutionary and Iterative Approach, July 2003, Elsevier (hereinafter "the Elsevier text"), and of the article "Web-Based Decision Support for Software Release Planning", *WSS 2003*, Oct. 2003, p. 13 – 20 (hereinafter "the WSS article"). None of the IEEE article, the Elsevier text, and the WSS article were published more than one year prior to the filing date of the present application. Each of the IEEE article, the Elsevier text, and the WSS article was previously made of record by the applicant in this application by citation in the information disclosure statement dated November 1, 2004.

2. In an Office Action dated May 26, 2009 of which I am aware, Claims 1-2, 8-10, 13-16, 18 and 21 - 28 have been rejected under 35 USC 103(a) as being

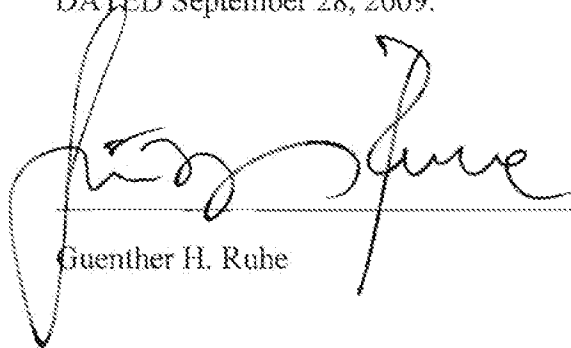
unpatentable over Robin in view of Aurum and Hartman. This declaration is provided to overcome the prior art rejection based on the Aurum reference, by proving invention of the claimed subject matter by me prior to the effective date of the Aurum reference. The Aurum reference was published, at the earliest, so far as I am aware, on November 1, 2003.

3. I hereby attest and confirm that I conceived the subject matter claimed in Claims 1-2, 8-10, 13-16, 18 and 21 - 28, and reduced to practice an embodiment of said subject matter prior to November 1, 2003. The IEEE article, the Elsevier text, and the WSS article referred to above, and which were cited by the examiner as anticipating references in the official action dated May 8, 2007, evidence my complete conception and reduction to practice of the claimed invention prior to the earliest effective date of the Aurum reference. I further attest that my conception of the subject matter claimed in Claims 1-2, 8-10, 13-16, 18 and 21 - 28 was followed by due diligence on my part from a date prior to November 1, 2003 to the filing of the present application on March 24, 2004.

5. The Aurum reference was not published more than one year prior to the filing date of the present application. None of the IEEE article, the Elsevier text, and the WSS article were published more than one year prior to the filing date of the present application. The IEEE article, the Elsevier text, and the WSS article are provided to establish my earlier conception and reduction to practice of an embodiment of our invention, and do not limit the scope of the claims in the present application. The reduction to practice of our invention documented in these articles was completed in Canada.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful statements may jeopardize the validity of the application or any patent issued thereon.

DATED September 28, 2009.



Guenther H. Rube